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RICK ROSS TOURING, LLC
11

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 RICK ROSS TOURING, LLC,
15 A Florida Limited Liability Company,

16
17 Plaintiff,

18 vs.

19 THE KAYO CORP.,
20 A California Corporation,

21 Defendant.
22
23

* CASE NO.
* '16CV2160 H BLM
*
* **COMPLAINT BY**
* **PLAINTIFF RICK ROSS**
* **TOURING, LLC FOR:**
*
* **1. BREACH OF**
* **CONTRACT**
*
* **DEMAND FOR JURY TRIAL**

24 Plaintiff RICK ROSS TOURING, LLC, a limited liability company organized
25 and existing under the laws of the State of Florida (hereinafter, "Plaintiff" or "Ross
26 Touring"), by its attorneys of record, complains of Defendant THE KAYO CORP.
27 (hereinafter, "Defendant" or "Kayo"), a corporation organized under the laws of the
28 State of California, as follows:

4810-8492-7799.1

COMPLAINT BY PLAINTIFF RICK ROSS TOURING, LLC

I. NATURE OF ACTION

1. Ross Touring brings this action to collect on monies owed to Ross Touring pursuant to the Brand Ambassador Agreement dated July 10, 2014 that Kayo entered into with Ross Touring (the “Agreement”). The Agreement provides that Ross Touring would furnish the services of William L. Roberts, II, professionally known as the music recording artist “Rick Ross,” as Brand Ambassador for a Kayo brand, DGK, LLC (“DGK”) of casual men's clothing (“Products”) for a term of two (2) years and that, in exchange, Ross Touring would be paid an “Ambassador Fee” equal to one percent (1%) of the gross sales of all Products sold at wholesale to third-party retailers and through global distributors, less applicable shipping charges, bona fide returns, chargebacks, trade discounts, and allowances. The Agreement requires Kayo to pay Ross Touring the Ambassador Fee every month, with a guaranteed minimum payment of \$10,000 per month. Additionally, the Agreement requires Kayo to pay Ross Touring a seven percent (7%) profit interest in the DGK brand. Ross Touring has fully performed the Agreement, but Kayo has not paid Ross Touring the Ambassador Fee and the profit interest since December 2015.

II. JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332, because the parties are citizens of different states and the matter in controversy exceeds the sum or value of \$75,000.

3. At all times mentioned herein, Kayo is a resident and citizen of the State of California and transacted business in the State of California, constituting sufficient minimum contacts in the State of California to subject Kayo to personal jurisdiction in the State of California.

4. Venue is appropriate pursuant to 28 U.S.C. §1391 because Kayo is a resident of the County of San Diego and is subject to personal jurisdiction in this District.

1 **III. THE PARTIES**

2 5. Ross Touring is a Florida limited liability company having its principal
3 place of business and citizenship in Mississippi.

4 6. Kayo is a California corporation having its principal place of business
5 in California.

6 **IV. STATEMENT OF FACTS**

7 7. Ross Touring and its member, William L. Roberts, II, have been in the
8 music business for over ten (10) years.

9 8. Ross Touring is wholly owned by Mr. Roberts.

10 9. Kayo is an athletic menswear clothing and accessory brand and is the
11 proprietor of the clothing brand DGK.

12 10. Kayo's DGK brand is sold online and in retail outlets throughout the
13 United States.

14 11. On July 10, 2014, Ross Touring and Kayo entered into the Agreement
15 for the services of Mr. Roberts to serve as Kayo's DKG Brand Ambassador for the
16 Products.

17 12. The Agreement, dated July 10, 2014, was effective immediately for a
18 term of 24 consecutive months, wherein Mr. Roberts would represent himself as a
19 Brand Ambassador for Kayo's DGK brand and provide a platform for the Products.

20 13. The Agreement outlines various "Brand Ambassador Obligations" that
21 Mr. Roberts agreed to fulfill, such as appearances, social media promotion of the
22 Products, and various other methods of brand display and recognition. Mr. Roberts
23 fully complied with his obligations under the Agreement.

24 14. The Agreement provides that Ross Touring would be paid an
25 "Ambassador Fee" "equal to one percent (1%) of the gross sales of all Products sold
26 at wholesale to third-party retailers and through global distributors during the term,
27 less applicable shipping charges, bona fide returns, chargebacks, trade discounts,
28 and allowances."

1 15. The Agreement requires Kayo to pay Ross Touring the Ambassador
2 Fee every month, with a guaranteed minimum payment of \$10,000 per month.

3 16. In addition, the Agreement requires Kayo to pay Ross Touring a seven
4 percent (7%) profit interest in the DGK brand.

5 17. Mr. Roberts fulfilled his obligations of promoting the Products and
6 engaging in brand display, and Kayo paid to Ross Touring the minimum
7 Ambassador Fee of \$10,000 per month, beginning in July 2014, the effective date of
8 the Agreement.

9 18. The last minimum monthly “Ambassador Fee” payment that was
10 remitted to Ross Touring by Kayo was in November 2015.

11 19. After multiple inquiries regarding the missed payments and the breach
12 of the Agreement, in a correspondence dated March 4, 2016, Kayo indicated to Ross
13 Touring that it was facing financial difficulty and admitted that it was late on
14 payments to Ross Touring for services rendered pursuant to the Agreement.

15 20. Kayo also represented an intent to complete payments “no later than
16 April 1.” However, Kayo failed to make Ambassador Fee payments to Ross Touring
17 since December 2015.

18 21. In a correspondence dated May 19, 2016, Kayo again acknowledged its
19 breach of the Agreement by admitting to the “overdue monthly payments under the
20 current contract.”

21 22. On May 20, 2016, Ross Touring sent a demand letter to Kayo
22 requesting accounting documents and the monies Kayo owed to Ross Touring.

23 23. To date, Kayo has not provided any response to the May 20, 2016 letter
24 or made any attempts to remedy its breaches of the Agreement.

25 24. As a result of Kayo's breaches of the Agreement, Ross Touring has
26 incurred, and will continue to incur, damages and is entitled to seek monetary relief.

27 25. Ross Touring has fully performed its obligations under the Agreement
28 and demands all sums owed to Ross Touring pursuant to the terms of the

1 Agreement.

2 26. From December 2015 to date, Kayo has failed or refused to pay any
3 amounts due to Ross Touring as required under the Agreement.

4 27. Upon information and belief, Kayo has failed or refused to provide an
5 accounting to Ross Touring in an intentional effort to avoid or delay paying Ross
6 Touring the amounts due to Ross Touring pursuant to the Agreement.

7 28. Despite being on notice of its breaches of the Agreement since at least
8 February 2016, Kayo has not provided accounting details or presented any proposed
9 solution for payment of the monies owed to Ross Touring.

10 29. Despite the notice of failure to pay and the demand for accounting in a
11 letter dated May 20, 2016, Kayo has not made any payments or presented any
12 proposed solution for payment of the monies owed to Ross Touring.

13 30. Pursuant to the Agreement, Kayo owes Ross Touring at least Eighty
14 Thousand Dollars (80,000.00) in Ambassador Fees alone from December 2015 to
15 the expiration of the Agreement in July 2016.

16 31. Pursuant to the Agreement, Ross Touring is also owed a seven percent
17 (7%) profit interest in Kayo's DKG brand, an amount that Ross Touring has been
18 unable to identify due to Kayo's repeated refusal to provide an accounting.

19 **V. FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**
20 **AGAINST KAYO**

21 32. Ross Touring hereby realleges and incorporates by reference all
22 allegations made in paragraphs 1-31 as though fully restated herein.

23 33. Ross Touring and Kayo entered into the Agreement wherein Ross
24 Touring would furnish the services of Mr. Roberts as Brand Ambassador for Kayo's
25 DGK Products.

26 34. Ross Touring has performed all conditions, covenants, and promises
27 required on its part to be performed under the Agreement, to the extent its
28 obligations have not been excused, frustrated, or prevented by the acts and/or

1 omissions of Kayo.

2 35. Kayo has breached the Agreement with Ross Touring by, among other
3 things, failing to account and pay Ross Touring all amounts due to Ross Touring
4 pursuant to the Agreement, including but not limited to the monthly minimum
5 Ambassador Fee of \$10,000.00 and the seven percent (7%) profit interest in the
6 DGK brand.

7 36. As a result of Kayo's breaches of the Agreement, Ross Touring has
8 suffered damages in an amount in excess of the Court's jurisdiction and subject to
9 proof at or before trial, together with interest at the legal rate and recoverable
10 attorney's fees.

11 **VI. PRAYER FOR RELIEF**

12 **WHEREFORE**, Ross Touring prays for judgment against Kayo as follows:

13 1) For any and all damages resulting from Kayo's breach of the
14 Agreement by failing to pay Ross Touring a seven percent (7%) profit interest in
15 Kayo's DKG brand in an amount to be determined during the course of discovery in
16 the litigation of this matter;

17 2) For any and all damages resulting from Kayo's breach of the
18 Agreement by, among other things, Kayo's failure to pay the monthly minimum
19 Ambassador Fee of \$10,000 since December 2015 in an amount according to proof
20 at or before trial but not less than \$80,000.00;

21 3) For reasonable attorneys' fees to prosecute the above-captioned action
22 where recoverable by contract, statute, or other law;

23 4) Prejudgment interest at the rate allowable by law;

24 5) For costs of suit incurred herein;

25 6) For further damages according to proof at or before trial; and

26 7) For such other and further relief as the Court may deem just and proper.

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VII. DEMAND FOR JURY TRIAL

Ross Touring respectfully demands a trial by jury as to all matters so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

DATED: August 26, 2016

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Zahed Amin

Zahed Amin, Esq.

Leron E. Rogers, Esq.

Sheri Bagheri, Esq.

Attorneys for Plaintiff

RICK ROSS TOURING, LLC

CERTIFICATE OF SERVICE

Rick Ross Touring, LLC v. The Kayo Corp.

I, Shannon Bingham, hereby certify that on August 26, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, for the Southern District of California, by using the CM/ECF system:

COMPLAINT BY PLAINTIFF RICK ROSS TOURING, LLC

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Executed on August 26, 2016, at San Diego, California.


Shannon Bingham